except that for publicly owned treatment works, municipal separate storm sewer systems, and municipal combined sewer overflows (including control facilities) and other wet weather control facilities, nothing in this Act shall be construed to authorize the use of water quality standards or permit effluent limitations which result in the finding of a violation upon failure of whole effluent toxicity tests or biological monitoring tests.''; and

(3) by adding at the end the folowing:

''(C) Where the permitting authority determines that the discharge from a publicly owned treatment works, a municipal separate storm sewer system, or municipal combined sewer overflows (including control facilities) or other wet weather control facilities causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criterion for whole effluent toxicity, the permit may contain terms, conditions, or limitations requiring further analysis, identification evaluation, or reduction evaluation of such effluent toxicity. Such terms, conditions, or limitations meeting the requirements of this section may be utilized in conjunction with a municipal separate storm sewer system, or municipal combined sewer overflows (including control facilities) or other wet weather control facilities only upon a demonstration that such terms, conditions, or limitations are technically feasible accurately represent toxicity associated with wet weather conditions, and can materially assist in an identification evaluation or reduction evaluation of such toxicity.''

(b). INFORMATION ON WATER QUALITY CRITERIA.—Section 304(a)(8) of such Act (33 U.S.C. 1314(a)(8)) is amended by inserting '', consistent with subparagraphs (B) and (C) of section 303(c)(2),'' after ''publish''.

(c) USE OF BIOLOGICAL MONITORING OR WHOLE EFFLUENT TOXICITY TESTING.—Section 402 of such Act (33 U.S.C. 1342) is amended by adding at the end the following:

''(q) USE OF BIOLOGICAL MONITORING OR WHOLE EFFLUENT TOXICITY TESTING.—

''(1) IN GENERAL.—Where the Administrator determines that it is necessary in accordance with subparagraphs (B) and (C) of section 303(c)(2) to include biological monitoring, whole effluent toxicity testing, or assessment methods as a term, condition, or limitation in a permit issued to a publicly owned treatment works, a municipal separate storm sewer system, or a municipal combined sewer overflow (including a control facility) or other wet weather control facility) permit term, condition, or limitation shall be in accordance with such subparagraphs.

''(2) RESPONDING TO TEST FAILURES.—If a permit issued under this section contains terms, conditions, or limitations requiring biological monitoring or whole effluent toxicity testing designed to meet criteria for biological monitoring or whole effluent toxicity, the permit may establish procedures for further analysis, identification evaluation, or reduction evaluation of such toxicity. The permit shall allow the permittee to discontinue such procedures, subject to future reinitiation of such procedures upon a showing by the permitting authority of changed conditions, if the source of such toxicity cannot, after thorough investigation, be identified.

''(3) TEST FAILURE NOT A VIOLATION.—The failure of a biological monitoring test or a whole effluent toxicity test at a publicly owned treatment works, a municipal separate storm sewer system, or a municipal combined sewer overflow (including a control facility) or other wet weather control facility shall not result in a finding of a violation under this Act.''.

ON IMPEACHMENT

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 6, 1999

Mrs. MINK of Hawaii. Mr. Speaker, my constituents who ask me to vote for impeachment do so on the assumption that the President has been found guilty of perjury.

They ask me to apply the law to the President the same as I would apply for ordinary citizens.

I have analyzed my views in accordance with this direction.

I say with no doubt whatsoever, that the Articles of Impeachment or the record which accompanied it make no specific finding of facts as to exactly what statement was given under oath that forms the basis of the crime of perjury.

There are many suggestions and innuendoes and assumptions, but there is no specific listing of proof upon which the Judiciary Committee relied to make its recommendation to impeach and remove the President from office.

The Judiciary Committee takes the position that they are not required to provide the House with any degree of specificity. They interpret their report on impeachment as merely a referral of various and sundry allegations to the Senate and accordingly forfeited their duty to examine the facts independently and decide exactly what facts support the allegations of perjury. I believe that this view of our Constitutional duty is an abdication of our sworn responsibility.

If this House is prepared to remove the President from office it must do so on the basis of specific findings of criminal behavior. It cannot be on generalized allegations with a hope that the Senate will determine whether crimes have been committed.

I agree with my constituents who ask us to apply the same law to the President as would be applied to ordinary people.

Ordinary citizens would be given the specific basis underlying the charge of perjury.

The President has not been provided this information. He has been presumed guilty of perjury because he will not admit to it. How does this square with the rule of law?

I believe that it is the duty of the courts under which the President was required to provide sworn testimony to review the statements and to make a prompt determination as to which of the charges of perjury is sustainable.

What if the Courts refuse to charge the President of the crime of perjury as some commentators suggest? If he is driven out of office before the Court makes this finding, how will this House remedy this ultimate penalty?

To vote for these Articles of Impeachment is to vote to remove the President from office without any of us knowing what exactly he testified to under oath amounted to perjury. At the minimum this must be elaborated in the Articles of Impeachment so that the Public and the Senate may know what the specific charges are and so that the President may defend himself.

When I vote against these Articles of Impeachment, I will do so because I cannot allow this House to avoid its Constitutional duty to enumerate its allegations of perjury before recommending impeachment.

No President is above the law. He is at least entitled to the same protection that applies to each of us if we should be charged with criminal conduct.

People who are charged with crimes must be informed of the specific charges.

Without that, the call for the rule of law is an empty and hollow gesture.

IMPEACHMENT OF PRESIDENT CLINTON

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 6, 1999

Mr. TIERNEY. Mr. Speaker, I shall be voting against each of the articles of impeachment. I am convinced that impeachment is not in the best interest of the country and its citizens. President Clinton's conduct—inappropriate and wrong as it was—does not reach the threshold necessary to constitute the kind of high crimes and misdemeanors envisioned by the founding fathers and subsequent interpreters of the Constitution.

I have reached this decision after reviewing applicable law and precedence, after considering the views of academics, and after weighing the comments of constituents. A vote for impeachment ought to be a matter of conscience, but it should also not be unmindful of the strong opinion of the governed. Impeachment in this case would essentially undo the results of two popular elections.

As my colleague HOWARD BERMAN has stated, ''That the President's conduct is not impeachable does not mean that society condones his conduct. Rather, it means that the popular vote of the people should not be abrogated for this conduct—when the people clearly do not wish for this conduct to cause the abrogation. * * * Conduct that may not be impeachable for the President * * * is not necessarily conduct that is acceptable in the larger society.''

Indeed the President is not blameless for the sorry state of affairs now before us. His actions were, as he admitted, indefensible, and his obfuscation of facts has been ''maddening.'' It would be entirely appropriate, I believe, for either or both bodies of Congress to strongly rebuke the President for his conduct and his lack of judgment.

It is regrettable that the leadership of the majority party, in the face of overwhelming public sentiment not to impeach—and in defiance of a fair number of its own party who have said that impeachment is not the appropriate course—has seemingly chosen to politicize this most serious matter. There is reason to believe that enormous pressure has been exerted on rank and file members of the majority party to support impeachment. The Republican leadership has compounded the situation by refusing to allow for a vote on the motion to censure the President—something that again its own members have said should be permitted. Leading members of the majority would have us believe they are acting out of conscience. Yet they would deny other members that same right. This sets the stage for bitter and needlessly divisive recriminations in the months ahead as the 106th Congress begins to confront the issues on our national agenda.